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12/16/2022
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0519-R-2022
Weisz, Madeleine
1.00

IN THE WATER COURT OF THE STATE OF MONTANA UPPER MISSOURI DIVISION JEFFERSON RIVER BASIN (41G) PRELIMINARY DECREE

CLAIMANTS: Jody L. Sandru; Rick R. Sandru

OBJECTORS: Jody L. Sandru; Rick R. Sandru

CASE 41G-0519-R-2022 41G 16805-00 41G 35200-00 41G 35211-00 41G 35232-00 41G 191351-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

- 1. Claims 41G 16805-00, 41G 35200-00, 41G 35211-00, 41G 35232-00, and 41G 191351-00 are water right claims owned by Jody Sandru and Rick Sandru (the Sandrus). The claims received objections from the Sandrus.
- 2. The objections to the claims in this case were timely filed on July 18, 2018. Attached to each of the objections is a motion to amend. The motions to amend request modifications to the claims in this case and resolve the claimants' objections to their claims. The motions to amend and the requested modifications are discussed claim by claim below.

Claim 41G 16805-00

3. Claim 41G 16805-00 is a stock claim from Bain Springs. The claimants objected to the place of use and point of diversion.

The motion to amend claim 41G 16805-00 requests a third point of diversion be added in the N2NENW of Section 31, T2S, R5W.

This additional point of diversion represents where stock drink directly from the source where Bain Springs arise and the location of their channel of flow.

Additionally, the motion to amend indicates that the point of diversion identified on the Preliminary Decree abstract in the NWNWNE of Section 31, T2S, R5W should be modified to the NWNE of Section 31, T2S, R5W to reflect the historical use of the claim more accurately.

The statement of claim form claimed the N2N2 of Section 31 of T2S, R5W as a point of diversion, which encompasses the three points of diversion that the claimants are requesting be identified on their abstract. The requested modifications to points of diversion should be accepted by the Court.

The redmarked abstract attached to the claimants' motion to amend indicates that the means of diversion for the point of diversion in the SWNWNE of Section 31, T2S, R5W should be changed from "gravity flow/direct" to just "gravity flow." Unfortunately, database constraints do not allow a means of diversion of just "gravity flow." Based on the information before the court, it appears the best description for the means of diversion

for this point of diversion is "pipeline." The means of diversion in SWNWNE of Section 31 should be modified to "pipeline."

The claimants also request the place of use be amended. The place of use appeared in the Preliminary Decree as the N2N2 of Section 31, T2S, R5W and the SWNE of Section 25, T2S, R6W.

The claimants request the place of use be modified to the following:

ID	Qtr Section	Section	Twp	Rge	County
1	NWNE	31	2S	5W	Madison
2	N2NENW	31	2S	5W	Madison
3	NWSESE	25	2S	6W	Madison
4	SWNENW	25	2S	6W	Madison

The modifications requested to the places of use in Section 31 are refinements that identify the place of use more precisely. The places of use located in Section 25 represent stock tanks that hold water from Bain Springs that is diverted via a pipeline. The map attached to the statement of claim form for 41G 16805-00 roughly depicts the conveyance system that carries the spring water to Section 25, T2S, R6W, but it is a WRS map and is lacking in detail. The map did show the very general location of a stock tank in Section 25, T2S, R6W. The claimants provided an updated map with their motion to amend that clarifies the location of the stock tanks. The place of use legal land descriptions should be modified pursuant to the claimants' motion to amend.

41G 35200-00

4. Claim 41G 35200-00 is a domestic claim from a spring. The claimants objected to volume and point of diversion.

Claimants' motion to amend requests that the 3.0 AF volume that was claimed on the statement of claim be reinstated. The DNRC reduced the volume to 2.0 AF during claims examination. It is unclear why. The claims examination manual indicates that the general volume guideline for domestic use is 1.5 AF per household and claim 41G 35200-00 serves two households. The statement of claim form has prima facie status. Claim 41G 35200-00 should be modified to reflect a volume of 3.0 AF.

The motion to amend also requests that the point of diversion be corrected from the SENENE of Section 24, T2S, R6W to the NENENE of Section 24, T2S, R6W. The map attached to the statement of claim supports the requested modification. Additionally, the claimants provide a more detailed map with their motion to amend showing the point of diversion in the NENENE of Section 24, T2S, R6W. The point of diversion should be modified to the NENENE of Section 24, T2S, R6W.

41G 35211-00

5. Claim 41G 35211-00 is a stock right from the Jefferson River. The claimants objected to the place of use.

The place of use for claim 41G 35211-00 was described in the 41G Preliminary Decree as being located in Sections 24 and 13. The claimants' motion to amend requests that the place of use be modified as provided below to be more precise:

ID	Qtr Section	Section	Twp	Rge	County
1	S2SE	13	2S	6W	Madison
2	W2	24	2S	6W	Madison
3	NE	24	2S	6W	Madison
4	NWNWSE	24	2S	6W	Madison

The modifications requested limit the place of use to a more exact description and may be accepted without further presentation of evidence.

Claim 41G 35211-00 received a DNRC issue remark providing notice that the point of diversion was modified during claim reexamination. The claimants did not object to the point of diversion. The issue remark has served its purpose of providing notice and should be removed from the claim.

41G 35232-00

6. Claim 41G 35232-00 is a stock claim from Spring Reef Creek. The Claimants objected to the place of use, point of diversion, and means of diversion.

Claim 41G 35232-00 appeared in the 41G Preliminary Decree with one point of diversion, a dam, in the SENENE of Section 24, T2S, R6W. In their motion to amend

attached to the objection, the claimants explain that the small reservoir is a minor component of the system and water is primarily diverted into ditches as part of a direct flow system.

The claimants explain that stock drink directly from the source in the NENE of Section 24, T2S, R6W, and the SESE of Section 13, T2S, R6W and request these legal land descriptions be added as points of diversion to claim 41G 35232-00.

The motion to amend requests that the place of use be expanded from the NE of Section 24, T2S, R6W to the following legal land description:

ID	Qtr Section	Section	Twp	Rge	County
1	S2SE	13	2S	6W	Madison
2	SENW	24	2S	6W	Madison
3	SWNE	24	2S	6W	Madison
4	N2NE	24	2S	6W	Madison

In support, the claimants explain that water right 41G 35232-00 is based on a Notice of Appropriation that was filed by A.J. Sperry. Attached to the motion to amend is evidence showing that Sperry owned property in the SE Quarter of Section 13 and the N2NE, SWNE, and SENW Quarter of Section 24 in T2S, R6W.

There is additional evidence that in 1946 Charles and Patty Miller acquired the property in the SE Quarter of Section 13 and the N2NE, SWNE, and SENW Quarter of Section 24 in T2S, R6W, along with its appurtenant water rights. Charles and Patty Miller filed the statement of claim for 41G 35232-00 on October 7, 1981. The evidence supports the claimants' assertion that the place of use should be expanded to include the S2SE of Section 13, T2S, R6W and the SENW of Section 24, T2S, R6W.

Based on the evidence provided by the claimants, the modifications requested to claim 41G 35232-00 should be accepted by the Court.

41G 191351-00

Claim 41G 191351-00 is an irrigation claim from Dry Boulder Creek. The claimants objected to the point of diversion.

Claim 41G 191351-00 appeared in the Preliminary Decree with a point of diversion in the SWNESW of Section 35, T2S, R5W. The claimants' motion to amend indicates that the correct point of diversion is the SWNENW of Section 35, T2S, R5W. The point of diversion originally claimed on the statement of claims is the SENWNW of Section 35, T2S, R5W. The map attached to the statement of claim file clearly shows the point of diversion is in the NW of Section 35.

The DNRC modified the point of diversion during claims reexamination pursuant to water court orders. The DNRC's modification was apparently in error. The claimant is in the best position to indicate the accurate point of diversion. The information before the court supports the claimants' assertion that the point of diversion is in the NW of Section 35, not the SW. The claim should be modified pursuant to the cliamants' motion to amend.

The issue remark appearing on the claim gives notice that the point of diversion was modified during claims reexamination. It has served its purpose of providing notice and the Claimants have indicated that the modification made was incorrect. The point of diversion should be corrected as requested by claimants and the issue remark should be removed from the claim abstract.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The claimant attached motions to amend and supporting documentation to support their objections to the claims in this case. The evidence before the court supports the modifications requested by the claimant. The motions to amend should be accepted by the court.

2. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2), MCA.

However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The issue remarks that appear on the claims in this case do not overcome the prima facie status of the claims. They should be removed from the claim abstracts.

RECOMMENDATIONS

- 1. The claims in this case should be modified as described above.
- 2. The issue remarks should be removed from claims 41G 35211-00 and 41G 191351-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Calli J. Michaels Michaels Law PLLC PO Box 1388 Dillon, MT 59725 (406) 660-4265 cmichaels@mlawmt.com

ABSTRACT OF WATER RIGHT CLAIM

JEFFERSON RIVER

BASIN 41G

Water Right Number: 41G 16805-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RICK R SANDRU

480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

JODY L SANDRU 480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

Priority Date: JUNE 30, 1919

Type of Historical Right: USE
Purpose (use): STOCK

Flow Rate: 30.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR

STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND

HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: BAIN SPRINGS

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	Govt Lot	Qtr Sec	Sec	<u>Twp</u>	Rge	County
1		NWNF	31	28	5W	MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

2 SWNWNE 31 2S 5W MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

3 N2NENW 31 2S 5W MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

WATER IS DIVERTED BY A GRAVITY FLOW PIPELINE TO STOCK TANKS. IN ADDITION. WATER FROM THE SOURCE IS DIRECTLY UTILIZED AT THE POINT OF

DIVERSION.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	Govt Lot	Qtr Sec	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	County
1			NWNE	31	2S	5W	MADISON
2			N2NENW	31	2S	5W	MADISON
3			NWSESE	25	2S	6W	MADISON

4

SWNENW 25 2S 6W MADISON

ABSTRACT OF WATER RIGHT CLAIM

JEFFERSON RIVER

BASIN 41G

Water Right Number: 41G 35200-00 STATEMENT OF CLAIM

> Version: 3 -- POST DECREE

> > **Status: ACTIVE**

RICK R SANDRU **Owners:**

480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

JODY L SANDRU 480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

Priority Date: DECEMBER 31, 1931

Type of Historical Right: USE

Purpose (use): **DOMESTIC** Flow Rate: 25.00 GPM Volume: 3.00 AC-FT

> **Households:** 2

*Source Name: SPRING, UNNAMED TRIBUTARY OF SPRING REEF CREEK

Source Type: GROUNDWATER

*Point of Diversion and Means of Diversion:

ID **Govt Lot** Otr Sec **Twp** Rge **County Sec** NENENE 6W 1 24 **2S MADISON**

Period of Diversion: JANUARY 1 TO DECEMBER 31

PIPELINE Diversion Means:

JANUARY 1 TO DECEMBER 31 Period of Use:

Place of Use:

ID **Govt Lot** Otr Sec **County** <u>Acres</u> <u>Sec</u> **Twp** <u>Rge</u> 1 SENENE 24 **2S** 6W **MADISON**

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

35200-00 35209-00

ABSTRACT OF WATER RIGHT CLAIM

JEFFERSON RIVER

BASIN 41G

Water Right Number: 41G 35211-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RICK R SANDRU

480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

JODY L SANDRU 480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

Priority Date: OCTOBER 10, 1929

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS

OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY

TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR

STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND

HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: JEFFERSON RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

IDGovt LotQtr SecSecTwpRgeCounty1NESESW232S6WMADISON

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: DITCH

Ditch Name: POGSON DITCH

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	Govt Lot	Qtr Sec	<u>Sec</u>	Twp	Rge	County	
1			S2SE	13	2S	6W	MADISON	
2			W2	24	2S	6W	MADISON	
3			NE	24	2S	6W	MADISON	
4			NWNWSE	24	2S	6W	MADISON	

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

35211-00

35228-00

46135-00

ABSTRACT OF WATER RIGHT CLAIM

JEFFERSON RIVER

BASIN 41G

Water Right Number: 41G 35232-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: RICK R SANDRU

480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

JODY L SANDRU 480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

Priority Date: DECEMBER 31, 1864

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS

ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT

HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR

STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND

HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING REEF CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u> <u>Govt Lot</u> <u>Qtr Sec</u> <u>Sec</u> <u>Twp</u> <u>Rge</u> <u>County</u> 1 SENENE 24 2S 6W MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

2 NENE 24 2S 6W MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

3 SESE 13 2S 6W MADISON

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

STOCK DRINK DIRECTLY FROM THE SOURCE IN THE NENE OF SECTION 24, T2S, R6W AND THE SESE OF SECTION 13, T2S, R6W. THE POINT OF DIVERSION IN THE SENENE OF SECTION 24, T2S, R6W IS A DAM DIVERTING WATER INTO A SMALL RESERVOIR. FROM THERE, WATER IS DIVERTED INTO DITCHES AS PART OF A

DIRECT FLOW SYSTEM.

Reservoir: ONSTREAM Reservoir Name: MILLER RESERVOIR

Govt Lot Qtr Sec Sec Twp Rge County

SENENE 24 2S 6W MADISON

Diversion to Reservoir: DIVERSION # 1

Surface Area: 0.25 ACRES

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	Govt Lot	Qtr Sec	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	County
1			S2SE	13	2S	6W	MADISON
2			N2NE	24	2S	6W	MADISON
3			SWNE	24	2S	6W	MADISON
4			SENW	24	2S	6W	MADISON

ABSTRACT OF WATER RIGHT CLAIM

JEFFERSON RIVER

BASIN 41G

Water Right Number: 41G 191351-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: RICK R SANDRU

480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

JODY L SANDRU 480 BAYERS LN

TWIN BRIDGES, MT 59754 9615

Priority Date: APRIL 20, 1911

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 5.00 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT

TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

*Maximum Acres: 270.00

Source Name: DRY BOULDER CREEK
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

IDGovt LotQtr SecSecTwpRgeCounty1SWNENW352S5WMADISON

Period of Diversion: APRIL 20 TO JULY 15

Diversion Means: HEADGATE

Period of Use: APRIL 20 TO JULY 15

*Place of Use:

<u>ID</u>		<u>Acres</u>	Govt Lot	<u> Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	County
1		80.00		NW	29	2S	5W	MADISON
2		150.00		S2	29	2S	5W	MADISON
3		40.00		S2SW	28	2S	5W	MADISON
	Total:	270.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

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40643-00 40644-00 40645-00 191351-00 191352-00

AUTHORIZATION TO CHANGE THE POINT OF DIVERSION AND PLACE OF USE ISSUED 07/06/1995. NOTICE OF COMPLETION DUE 12/31/1996. SEE 41G 040643-01.

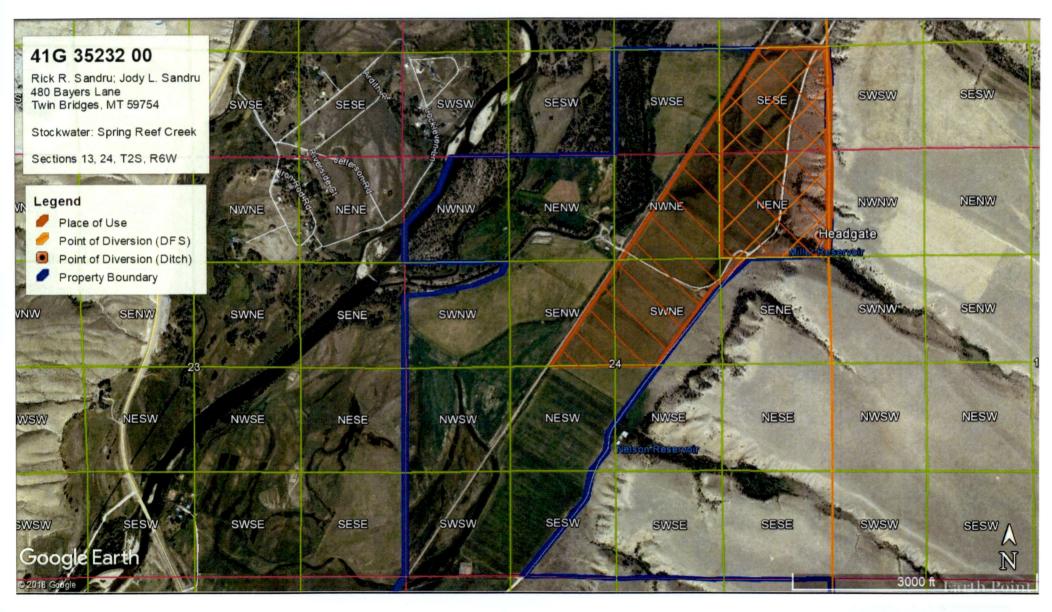


Exhibit D



Exhibit B

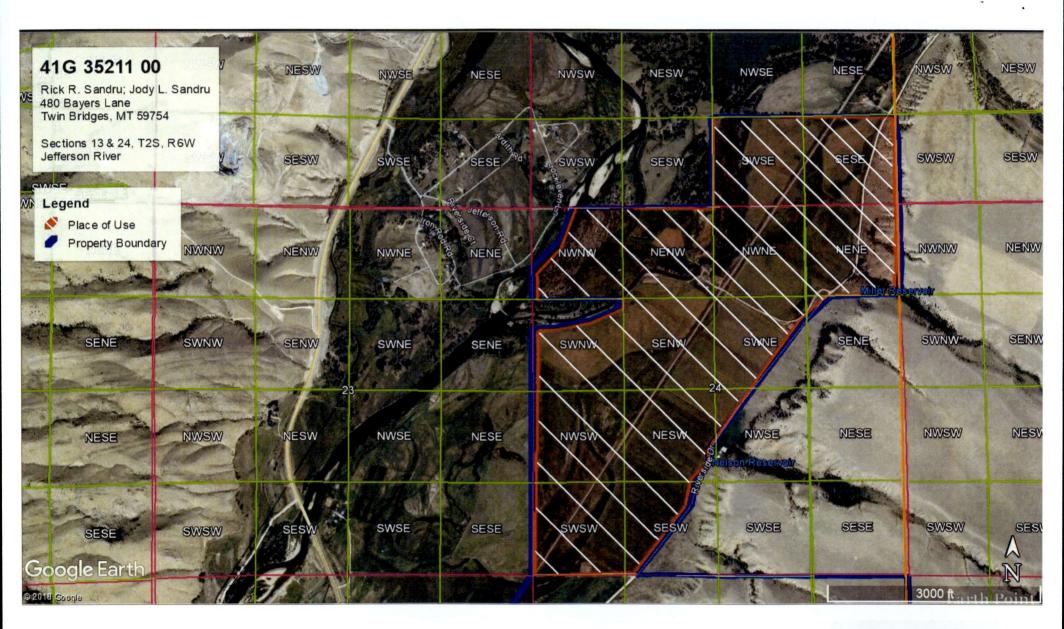


Exhibit B

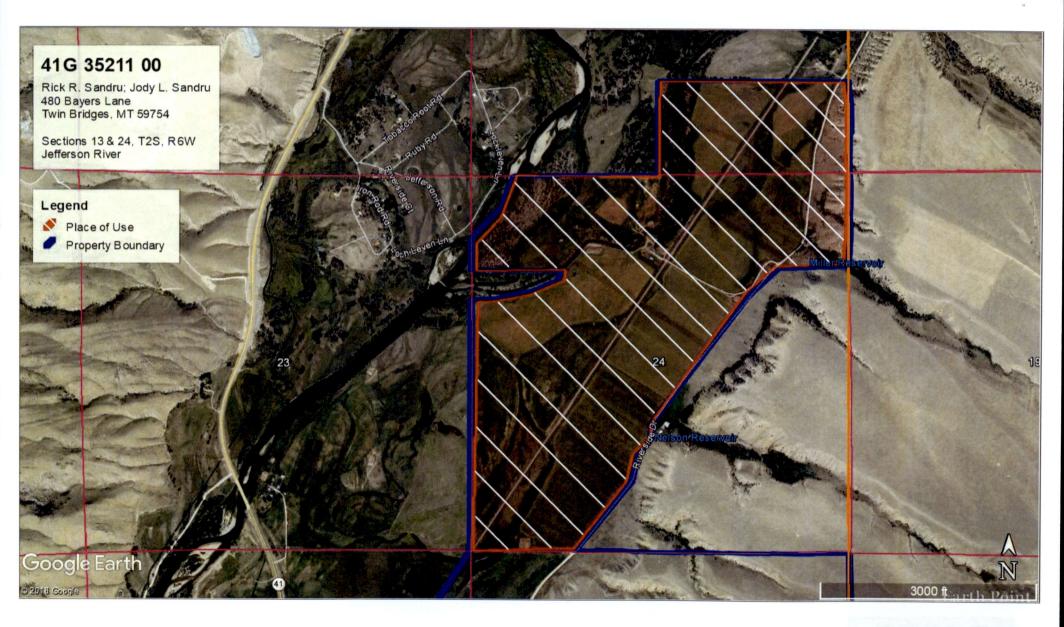


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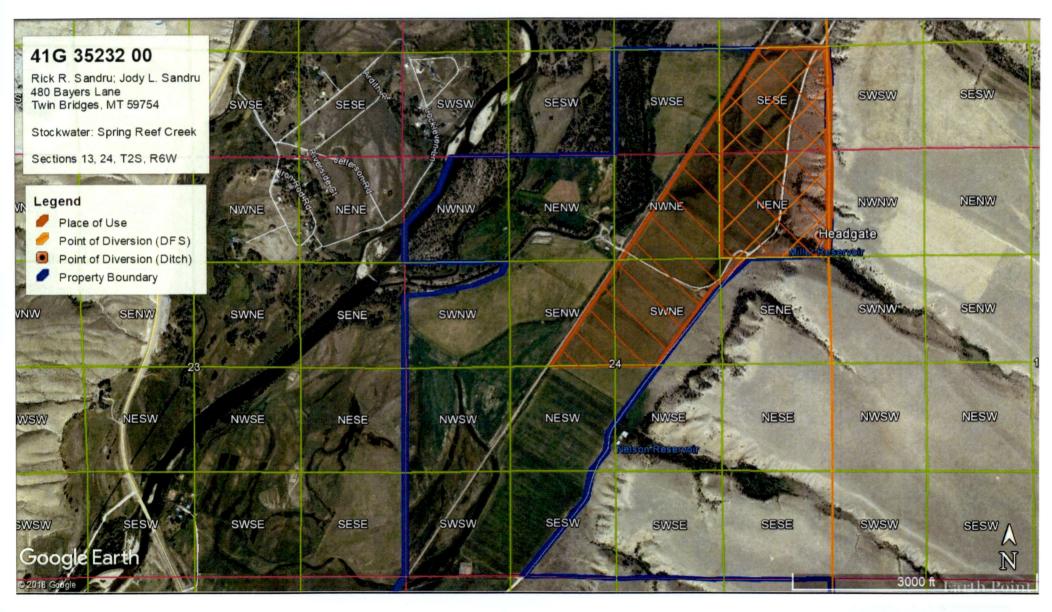


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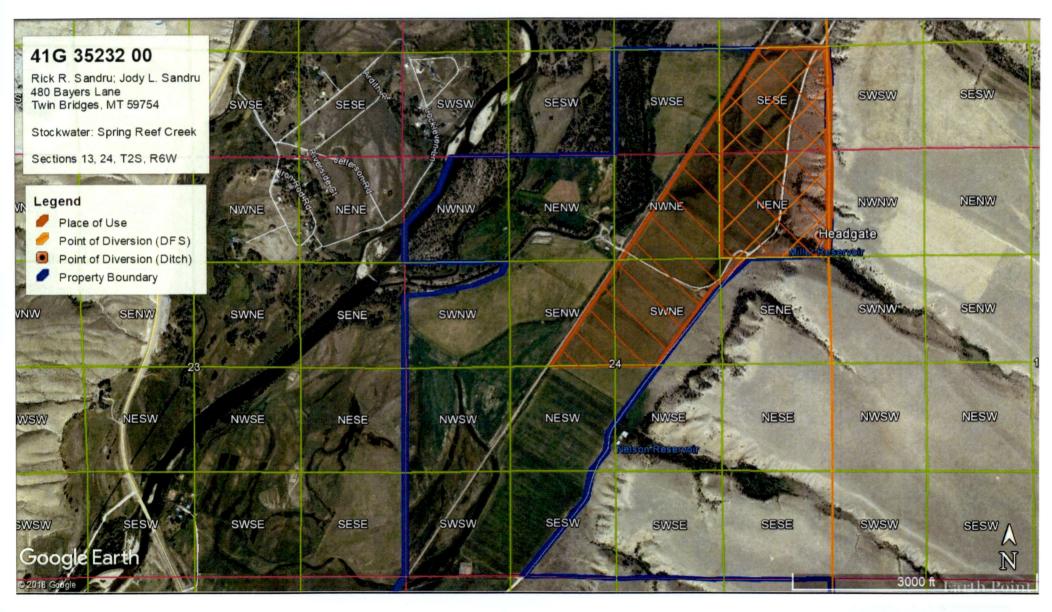


Exhibit D